



**Homeland
Security**

Science and Technology

June 21, 2013

Shawn Musgrave
MuckRock News
DEPT MR 2014
PO Box 55819
Boston, Massachusetts 02205

RE: **2013-STFO-09**

Dear Mr. Musgrave:

This is the interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Science and Technology Directorate (S&T) dated October 16, 2012, and received by this office on May 17, 2013. You are seeking: 1) any requests for proposals, proposals submitted by vendors, contracts, budgets or cost allocations for the purchase and/or use of aerial drones, UAs, UAVs and UASs; 2) any policies, guidelines, manuals and/or instructions on department use of drones including on the legal process required such as a warrant or court order, if any, before operating a drone; 3) any departmental records concerning this departments use of drones now or plans to use drones in the future; a) any departmental records concerning this departments use of drones now or plans to use drones in the future including; b) policies, guidelines, manuals and/or instructions on storage requirements or procedures for video static images obtained through use of drones, including retention time; c) records concerning the altitude at which drones can or do fly; and d) records concerning drones ability to carry weapons.

A search was conducted within S&T's Borders and Maritime Security Division for documents responsive to your request. A search of computer network drives, archive files, emails, and archived emails for the key terms unmanned aerial vehicles, UAV, UAS, unmanned aircraft, and robotic aircraft produced a total of 54 pages. Of those pages, I have determined that 16 pages of the records are releasable in their entirety, 23 pages are partially releasable, and 12 pages are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(4), (b)(5), (b)(6), (7)(c), and (7)(e).

Enclosed are 39 pages with certain information withheld as described below.

FOIA Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public. I reviewed the responsive documents, the submitter's objections to release, and relevant case law, and I determined that the information is exempt from disclosure under subsection (b)(4) of the FOIA and must be withheld in order to protect the submitter's proprietary interests. The information withheld consists of line item pricing and detailed instructions on how to operate a company's UAS technology. If this information was released it would cause irreparable harm such as reverse engineering, allow competitors to make copy cat models of the products, and provide competitors with an advantage to manipulate prices which would cause the company a decrease in product and profit.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that portions of the responsive documents qualify for protection under the

- **Deliberative Process Privilege**

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The information withheld consists of draft memoranda, estimated availability of funds and agency personnel deliberating about actions to acquire and disseminate funding.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. *The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, email addresses, telephone numbers, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.* The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination. *The types of documents and/or information that we have withheld could consist of names, addresses, identification numbers, telephone numbers, fax numbers, or various other documents that are considered personal.*

Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I determined that disclosure of *law enforcement systems checks, manuals, checkpoint locations, surveillance techniques* could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

Regrettably, we are experiencing a delay in processing your request. Upon completion of the processing, all documents that can be released will be made available to you at the earliest possible date. We sincerely apologize for the delay you are experiencing and appreciate your continued patience.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), Mailstop 0655, U.S. Department of Homeland Security, Washington, DC 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Provisions of the FOIA [AND PRIVACY ACT] allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).